IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.36 OF 2004

M/s Satish K. Narang and Co. ... Petitioners

v/s

Jamnadas Morarjee Secs. Ltd. ... Respondents

Ms S.R. Kumbhat for Petitioners.

Mr A.A. Mukhri i/b M/s Purohit and Co. for Respondents.

CORAM : D.K.DESHMUKH J.

DATE : 2ND MAY 2005

P.C.: -

1. By this petition, the petitioners challenge an award made by the Arbitral Tribunal of the Bombay Stock Exchange rejecting the claim made by the petitioners on the ground that it is barred by the law of limitation. Considering that the claim of petitioners related to the transactions of January 1995 when in the bye-laws of the Bombay Stock Exchange there was no period of limitation laid down for making a reference to arbitration, the petitioners may be right in contending that the reference made in the year 2002 to arbitration was not barred by the law of limitation. However, in my opinion, still the award cannot be disturbed because if there was no period of limitation laid down in the bye-laws, there would be an obligation on the petitioners to invoke the arbitration clause within a reasonable time from the date of accrual of the cause of action to the petitioners. The cause of action accrued in the month of January 1995 when according to the petitioners, though the petitioners were entitled to receive delivery of the shares purchased by the petitioners, the respondents did not give the delivery. It is now a settled law in view of series of judgments of the Supreme Court that a cause of action for making a

reference to arbitration accrues on the date on which the cause of action for filing a suit, had there been no arbitration clause, would have arisen. The Arbitrators are also bound by the principles of justice, equity and good conscious. Therefore, if an Arbitrator finds that entertaining a claim would result in failure of justice, he can definitely decline to entertain the claim. Even in cases where no period of limitation is prescribed, justice demands that the litigant must make his claim without any undue delay. Inaction on the part of the claimant for a long time in lodging a claim may make it unjust to uphold his claim. The requirement of making a reference without any undue delay applies with full force in relation to commercial litigation because most of the time, the commercial litigation is based on documents and accounts which are required to be maintained by the parties in the ordinary course of business. These documents which are required to be maintained cannot be kept for unlimited time and the need for destruction of the record after lapse of a particular period is also recognised by various laws which lay down the period after which the record can be destroyed. In these circumstances therefore, if the litigant is permitted to make his claim at any point of time, it may work to the prejudice of the other side because in a given case the claim may be made after the other side has destroyed its record of the relevant

period. In my opinion, it is in the public interest as also in the interest of justice that an application is made in case of a litigation where no period of limitation is prescribed to institute proceedings for enforcement of the claim, within a reasonable time. No universal rule can be laid down as to what would a reasonable time. What would be reasonable time would defer and vary from case to case. In these circumstances therefore, in my opinion, in cases where there is no period of limitation prescribed when the litigant makes his claim, he has to satisfy the Arbitrators that he has made the reference without any undue delay and that he is not guilty of latches. If the Arbitrator finds that the claimant is guilty of latches, the Arbitrator can decline to entertain the claim for that reason because awarding unduly delayed claim will work injustice on the other side. The explanation that is given by the petitioners for not approaching the Grievances Cell till 1999 is that the respondents did not deny their liability specifically. In my opinion, this contention is without any substance. The letter dated 29th May 1996 from the respondents to the petitioners makes the position absolutely clear. This letter is written in response to the statement of account dated 28th May 1996 sent by the petitioners to the respondents. The respondents in that letter state that the statement of account is incorrect and that the

statement of account No.7219 showing debit of Rs.18,379/- is enclosed. The learned counsel appearing for petitioners is not in a position to point out to me either the statement of account dated 28th May 1996 sent by the petitioners to the respondents nor is she in a position to point out to me the statement of account No.7219 sent by the respondents to the petitioners. But the fact remains that in the letter dated 29th May 1996, there is a clear statement that the account of the petitioners was in debit. Had the shares, according to the respondents, been in custody of the respondents, which belonged to the petitioners, the account would not have shown debit balance. What is significant is that though the petitioners say that the respondents had not denied their liability, the petitioners have not placed on record what was the response of the petitioners to the letter dated 29th May 1996. Perusal of the letter dated 29th May 1996 leaves one in no doubt that the respondents in clear terms denied their liability to the petitioners by that letter and therefore, there was no justification for the petitioners to wait till the year 1999 to lodge their claim before the Grievances Cell and thereafter wait till October 2002 to make a reference to the arbitration. It is clear that the claim made by the petitioners was a stale claim, the petitioners were guilty of latches and therefore, the Arbitral Tribunal was justified in not entertaining the claim. For all

these reasons therefore, in my opinion, no fault can be found with the award impugned in the petition. Petition therefore fails and is dismissed. Petitioners are directed to pay cost of this petition to the respondents as incurred by the respondents.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.